

The Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
HADIS NUHANOVIC,  
Defendant.

| NO. CR20-151-RAJ

## **MOTION FOR PRELIMINARY ORDER OF FORFEITURE**

**NOTE ON MOTION CALENDAR:  
February 3, 2023**

The United States respectfully requests a Preliminary Order of Forfeiture, pursuant to Federal Rule of Criminal Procedure (“Fed. R. Crim. P.”) 32.2(b), 21 U.S.C. § 853(p), and Defendant Hadis Nuhanovic’s plea agreement, Dkt. No. 150, forfeiting Defendant’s interest in (i) a sum of money (“Money Judgment”) in the amount of \$100,000, representing proceeds Defendant personally obtained from his commission of *Conspiracy to Commit Violations of the Travel Act*, in violation of 18 U.S.C. § 371; and (ii) \$100,000 in United States currency, seized from Defendant’s residence (“Seized Currency”), as substitute property in satisfaction of the Money Judgment.

## I. FACTS

25 On August 19, 2020, the Federal Bureau of Investigation (“FBI”) executed a  
26 search warrant for Defendant’s residence. Dkt. No. 150 at 11. During the search, FBI  
27 seized the Seized Currency, which agents found arranged in \$10,000 stacks comprising

1 \$100 bills, in vacuum-sealed packaging hidden inside a llama-shaped ottoman in  
 2 Defendant's child's bedroom. *Id.* FBI timely commenced administrative forfeiture of the  
 3 Seized Currency pursuant to 18 U.S.C. § 983. See Dkt. No. 73-1 (Declaration of FBI  
 4 Special Agent Donald Santiso in Support of Motion for Protective Order Restraining  
 5 Certain Forfeitable Property) ¶ 11.

6 On September 28, 2022, Defendant pled guilty to *Conspiracy to Commit*  
 7 *Violations of the Travel Act*, in violation of 18 U.S.C. § 371, and *Filing False Tax Return*,  
 8 in violation of 26 U.S.C. § 7206(1). Dkt. No. 150. In his Plea Agreement, Defendant  
 9 agreed to forfeit the above-identified sum of money pursuant to 18 U.S.C. § 981(a)(1)(C),  
 10 by way of 28 U.S.C. § 2461(c), as it reflects the proceeds he personally obtained from his  
 11 commission of the *Conspiracy to Commit Violations of the Travel Act* offense. *Id.* ¶ 14.  
 12 The indictment included forfeiture allegations that specifically identified the Seized  
 13 Currency as property subject to forfeiture, which preserved the United States' ability to  
 14 pursue forfeiture of the Seized Currency in the criminal proceeding in the face of  
 15 potential claims in the administrative forfeiture proceeding. 18 U.S.C. § 983(a)(3)(C).

16 Defendant ultimately did submit a claim to the Seized Currency in the  
 17 administrative forfeiture proceeding, which FBI referred to the United States Attorney's  
 18 Office for judicial forfeiture. Dkt. No. 73-1 ¶ 11. In response, and to further preserve the  
 19 Seized Currency's availability for forfeiture, the United States moved for a protective  
 20 order authorizing the continued restraint of the Seized Currency pending resolution of  
 21 this case. See Dkt. No. 73. The United States specifically moved to restrain the Seized  
 22 Currency on the grounds that the currency was forfeitable under 18 U.S.C. §§ 1030(i)(1)  
 23 and (j) as personal property that was intended to be used to commit or facilitate the  
 24 commission of conspiracy to violation 18 U.S.C. § 1030, as charged in count 1 of the  
 25 indictment. *Id.* at 8. The Court granted the United States' motion over Defendant's  
 26 objection. Dkt. Nos. 74 and 78.

1 On September 28, 2022, Defendant entered into a plea agreement with the United  
 2 States, in which Defendant agreed to enter a plea of guilty to two counts in a Superseding  
 3 Information: one count of conspiracy to commit violations of the Travel Act, in violation  
 4 of 18 U.S.C. § 371, and one count of filing a false tax return, in violation of 26 U.S.C.  
 5 § 7206(1). Dkt. No. 150; *see also* Dkt. No. 146 (superseding information). Notably,  
 6 neither count charged in the superseding information carried with it the specific authority  
 7 identified by the United States in its motion for a protective order as supporting forfeiture  
 8 of the Seized Currency in this proceeding. Defendant admitted in his plea agreement,  
 9 however, that he personally obtained more than \$100,000 in proceeds as a result of the  
 10 conspiracy offense to which he pleaded guilty, Dkt. No. 150 at 11, and he agreed to the  
 11 Money Judgment in that amount, *id.* at 16. Defendant further agreed that the Seized  
 12 Currency would be included in an Order of Forfeiture and forfeited to the United States  
 13 as a substitute asset pursuant to 21 U.S.C. § 853(p). *Id.* at 16. To that end, Defendant  
 14 agreed the conditions set forth in 21 U.S.C. §§ 853(p)(1)(A)–(E) have been satisfied. *Id.*

15 In the plea agreement, Defendant acknowledged that the Money Judgment is  
 16 separate and distinct from any restitution or criminal fine the Court may order in this  
 17 case. The United States agreed, however, that it would credit any amount Defendant pays  
 18 toward restitution or a criminal fine as part of a sentence imposed in this case against the  
 19 outstanding balance of the Money Judgment.

## 20 II. ARGUMENT

21 Upon entry of a guilty plea on any count for which criminal forfeiture is sought,  
 22 the Court is charged with determining what property is subject to forfeiture. Fed. R.  
 23 Crim. P. 32.2(b)(1)(A). Where, as here, the United States seeks a personal money  
 24 judgment, part of the Court’s charge includes determining “the amount of money that the  
 25 defendant will be ordered to pay.” *Id.* Where forfeiture is required, and unless otherwise  
 26 impractical, the rules require entry of a preliminary order of forfeiture in advance of  
 27 sentencing. Fed. R. Crim. P. 32.2(b)(2)(A)–(B). Depending on the Court’s forfeiture

1 determinations, the preliminary order of forfeiture may do any or all of the following:  
 2 (i) set forth the amount of any money judgment; (ii) direct the forfeiture of specific  
 3 property; and/or (iii) direct the forfeiture of any substitute property “if the government  
 4 has met the statutory criteria” set forth in 21 U.S.C. § 853(p). Here, the government asks  
 5 the Court to both order a \$100,000 money judgment and direct the forfeiture of the  
 6 Seized Currency as substitute property in satisfaction of that money judgment.

7 The requested Money Judgment is warranted here as it represents the minimum  
 8 proceeds Defendant obtained from his commission of the offense charged in Count 1 of  
 9 the Superseding Information. The forfeiture authority for that count is found in 18 U.S.C.  
 10 § 981(a)(1)(C), by way of 28 U.S.C. § 2461(c), which requires forfeiture, as part of the  
 11 sentence in the criminal case, of property constituting or derived from proceeds of the  
 12 offense. 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c). In the Ninth Circuit, the Court’s  
 13 determination of the amount of a money judgment under 18 U.S.C. § 981(a)(1)(C)—the  
 14 forfeiture statute that applies to Defendant’s convictions of wire fraud, mail fraud, and  
 15 conspiracy to commit wire fraud and mail fraud—is based on “how much of the proceeds  
 16 of the crime came to rest with” Defendant. *United States v. Thompson*, 990 F.3d 680, 691  
 17 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 616 (2021). That amount is, at a minimum,  
 18 \$100,000, based on Defendant’s admissions in his plea agreement. Dkt. No. 150 at 16.  
 19 The Money Judgment is personal to Defendant and, pursuant to Rule 32.2(c)(1), no third-  
 20 party ancillary process is required before forfeiting it. Fed. R. Crim. P. 32.2(c)(1) (“[N]o  
 21 ancillary proceeding is required to the extent that the forfeiture consists of a money  
 22 judgment.”).

23 The Court should also direct the forfeiture of the Seized Currency as substitute  
 24 property in satisfaction of the Money Judgment. Rule 32.2(b)(2)(A) states that a  
 25 preliminary order of forfeiture may “direct[] the forfeiture of any substitute property if  
 26 the government has met the statutory criteria.” Those criteria are set forth in 21 U.S.C.  
 27 § 853(p)(1), which states in pertinent part:

1                   (1) Paragraph (2) of this subsection [relating to the forfeiture of substitute  
 2                   property] shall apply, if any property described in subsection (a)  
 3                   [relating to the forfeiture of specific property], as a result of any act or  
 omission of the defendant –

4                   (A) cannot be located upon the exercise of due diligence;  
 5                   (B) has been transferred or sold to, or deposited with, a third party;  
 6                   (C) has been placed beyond the jurisdiction of the court;  
 7                   (D) has been substantially diminished in value; or  
 8                   (E) has been comingled with other property which cannot be divided  
 without difficulty.

9 Where at least one of those criteria is satisfied—i.e., where a defendant has made  
 10 otherwise forfeitable specific property unavailable for forfeiture by one or more of the  
 means described in §§ 853(p)(1)(A) through (E)—“Paragraph (2)” of the section directs  
 11 the Court to order forfeiture “of any other property of the defendant, up to the value of”  
 12 the specific property. As the Ninth Circuit explained: “[T]he law provides that if, upon  
 13 conviction, forfeitable assets are unreachable by the government, the court shall order the  
 14 forfeiture of substitute assets: property of the defendant that is not connected to the  
 15 underlying crime.” *United States v. Ripinsky*, 20 F.3d 359, 362 (9th Cir. 1994).

16                  Here, Defendant has agreed that the “conditions set forth in [21 U.S.C.  
 17 §§ 853(p)(1)(A)–(E)] have been satisfied.” Dkt. No. 150 at 16. He further expressed his  
 18 understanding that the United States “may pursue additional property of Defendant as  
 19 substitute assets up to the unpaid amount” of the Money Judgment. *Id.* Indeed, the Money  
 20 Judgment represents the specific property—the proceeds of Defendant’s conspiracy to  
 21 violate the Travel Act—the government would have forfeited if Defendant had not  
 22 rendered them unreachable. With Defendant’s admission that the government has met the  
 23 statutory criteria, the Court should direct the forfeiture of the Seized Currency as  
 24 substitute property.

25                  Unlike the Money Judgment, forfeiture of the Seized Currency is subject to the  
 26 third-party ancillary process. Fed. R. Crim. P. 32.2(e)(2)(B); *see also United States v.*  
 27 *Lester*, 85 F.3d 1409 (9th Cir. 1996) (third parties may contest the forfeiture of substitute

assets in the ancillary proceeding). Thus, upon entry of the Preliminary Order of Forfeiture, the government will follow the procedures set forth in Rule 32.2(b)(6) and 21 U.S.C. § 853(n) for providing third-party notice regarding the Seized Currency, and, as necessary, the procedures set forth in Rule 32.2(c) for conducting ancillary proceedings. Any amounts of the Seized Currency finally forfeited to the United States, following completion of the third-party notice process and any ancillary forfeiture proceeding, will be applied toward the then-outstanding balance of the Money Judgment.

The Money Judgment is separate and distinct from any restitution or criminal fine the Court may order in this case. In the plea agreement, the United States agreed that it would credit any amount Defendant pays toward restitution or a criminal fine as part of a sentence imposed in this case against the outstanding balance of the Money Judgment. Accordingly, if, at the time forfeiture of the Seized Property has become final, Defendant has separately made payments toward any restitution obligation or criminal fine imposed by the Court, the United States will revise the forfeiture of the Seized Currency so that it does not exceed the then existing Money Judgment balance.

### III. CONCLUSION

For the foregoing reasons, the United States respectfully moves for a Preliminary Order of Forfeiture forfeiting Defendant's interest in the Money Judgment and the Seized

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1 Currency as substitute property in satisfaction thereof. A proposed order is submitted  
2 herewith.

3 DATED this 26th day of January, 2023.

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5 Respectfully submitted,  
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7 NICHOLAS W. BROWN  
8 United States Attorney  
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1                   **CERTIFICATE OF SERVICE**  
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I hereby certify that on January 26, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sends notice of the filing to all ECF participants of record.

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7                   *s/ Chantelle Smith* \_\_\_\_\_  
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